In the High Court of Judicature at Madras

Dated: 18/11/2004

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The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice C. NAGAPPAN

Writ Appeal No.1359 of 1997

M/s. Auro Food Ltd.,
Auroville P.O
Pondicherry
Rep. By its Director B.M. Patel. .. Appellant

-vs-

1. The Commissioner of Income tax
Tamilnadu-V
121 Nungambakkam High Road
Madras 600 034.

2. The Deputy Commissioner of Income tax
Special Range V
Madras 600 034. .. Respondents

Appeal under clause 15 of the Letters Patent against the order of the Honourable Mr.Justice K. Sampath dated 09.09.1997 and made in the exercise of the Special Original Jurisdiction of the High Court in Writ Petition No.15177 of 1988 presented under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to call for the records relating to the petitioner in C.No.2031(64)/88-89-TNV on the file of the first respondent and quash the impugned order dated 7.11.1988 and consequently direct the first respondent to waive interest of Rs.4,29,670/- levied under Section 220(2) of the Incometax Act for the Assessment year 1980-81.

!For appellant : Mr. P.P.S. Janarthana Raja
For M/s. Subbaraya Aiyar

^For respondents : Ms. Pushya Sitaraman
..

:JUDGEMENT

(Judgment of the Court was delivered by P. SATHASIVAM,J.,)

The writ appeal is filed against the order of the learned single Judge dated 09.09.1997 made in W.P.No.15177 of 1988, in and by which the learned Judge confirmed the order dated 07.11.1988 of the Commissioner of Income-tax - first respondent herein.

2. For convenience, we shall refer the parties as arrayed before the learned single Judge.

3. The petitioner - M/s. Auro Food Limited, Pondicherry filed a petition under Section 220 (2A) of Income Tax Act, 1961 (in short "the Act") on 03.09.1988 for waiver of interest before the Commissioner of Income-tax, Madras. It is the case of the petitioner that it had a claim for deduction under Section 80-J of the Act for a larger quantum than that was finally decided. Till the issue was settled by the Supreme Court in its decision in Lohia Machine Tools Limited (152 ITR 3 08), the petitioner pointed out that it had in its favour the decision of the Madras High Court. In the waiver petition, it is also stated that the demand was not outstanding, since the issue was in its favour and as soon as a revision of the assessment was made consequent to the Supreme Court's decision, the Company had paid its claim and hence, there is no scope for levy of interest under Section 220 (2) of the Act.

4. The first respondent, namely, Commissioner of Income-tax, who is vested with power to grant waiver of interest, after considering the scope of sub-Section 2A of Section 220 of the Act and the grievance expressed by the petitioner, after holding that the reasons pointed out by the petitioner are not enough for the invocation of Section 220 (2A) of the Act, dismissed the said petition. Questioning the said order, the petitioner filed WP.No.15177 of 1988, praying to quash the said order dated 07.11.1988 and also praying for further direction to the Commissioner of Income tax - first respondent, to waive interest of Rs.4,29,670/- levied under Section 220 (2) of the Act for the Assessment year 1980-81. The learned Judge, by the impugned order dated 09.09.1997, after considering the relevant provision, claim of the petitioner and the stand taken by the Department arrived at a conclusion that the authority has exercised its discretion properly, rejected the claim for waiver of interest, and dismissed the writ petition; hence the present writ appeal.

5. Heard Mr. P.P.S. Janarthana Raja, for M/s. Subbaraya Iyer, the learned counsel for the appellant and Ms. Pushya Sitaraman, learned senior standing counsel for Income-tax / respondents.

6. The learned counsel appearing for the appellant after taking us through Sub-section 2A of Section 220 of the Act and circumstances highlighted by the petitioner for the waiver of interest and the order of the Commissioner of Income Tax would submit that inasmuch as the authority - Commissioner of Income Tax has not applied his mind and not furnished adequate reason before dismissing the petition filed by the petitioner Company, the said order cannot be sustained. In other words, according to the learned counsel, the authority is exercising quasi-judicial function, he has to apply his mind with reference to the grievance expressed by the petitioner, and

ought to have passed a speaking order. On the other hand, the learned senior standing counsel for the Department contended that the claim of the assessee / petitioner was duly considered with reference to the statutory provisions and rightly rejected by the Commissioner, which was upheld by the learned Judge, and there is no merit in the present appeal; hence, prayed for dismissal of the same.

7. We have carefully considered the rival submissions made by both the counsel, order of the Commissioner of Income-tax and the learned single Judge.

8. Before considering the reasons stated in the petition filed under Section 220 (2A) of the Act, it is useful to refer the relevant provision.
"220. When tax payable and when assessee deemed in default.
(1)??..
(2)..??

(2A) Nothwithstanding anything contained in sub-section (2), [the [Chief Commissioner or Commissioner] may] reduce or waive the amount of interest paid or] payable by an assessee under the said sub-section if he is satisfied] that -
(i)payment of such amount has caused or would cause genuine hardship to the assessee;
(ii)default in the payment of the amount on which interest has been paid or was payable under the said sub-section was due to circumstances beyond the control of the assessee; and
(iii)the assessee has co-operated in any inquiry relating to the assessment or any proceeding for the recovery of any amount due from him.] "

In order to avail the benefits of the above provision, the assessee has to establish that the payment of interest has caused or would cause (a) genuine hardship; (b) default was due to circumstances beyond the control of the assessee; and (c) assessee has cooperated in an enquiry or in any proceeding.

9. Now, we shall consider whether the petitioner has made out a case for applicability of the above-mentioned provision. In the petition it is stated that the assessee had cooperated at all stages with the Department. Regarding payment, it is stated that the Company is now in a financial crisis due to its modernisation and expansion, the non-availability of wheat from the Government with the result wheat has to be purchased in the open market at very high rates, the borrowings made in earlier years and investments made in the new Units which have not yet started yielding results. The Commissioner of Income-Tax in his order dated 07.11.1988 referred to the proved history of the case, the grievance / difficulties expressed by the assessee and the conditions to be satisfied for applicability of the statutory provision. After referring to those details, has passed the following order.

" I am afraid that the reasons pointed out above had been constituted enough

and sufficient reasons for the invocation of Section 220 (2A). The assessee had benefited from the decision of the Court in the matter of postponement of its payment. In the circumstances, I see no reason to entertain this petition and hence it is dismissed."

As rightly pointed out by the learned counsel for the appellant, though necessary details, such as conditions to be satisfied, the grievances expressed by the assessee, etc., have been stated, the Authority, who is exercising its quasi judicial function has not considered each grievance and answered separately by giving adequate reason for rejecting the petition for waiver of interest. In this regard the learned counsel for the appellant very much relied on the decision of the Apex Court in the case of Kishan Lal vs. Union of India and another reported in 230 ITR 85. There also, in order to avoid levy of interest, an application under Sub-section 2A of Section 220 of the Act was filed before the Central Board of Direct Taxes. The Board has rejected the said application by giving the following reason.

" Please refer to your petition dated nil and further petition dated November 24, 1986, on the subject mentioned above. The Board has examined the matter. After considering the application filed by you and the report of the Commissioner of Income-tax in the matter, the Board is of the view that the conditions as laid down in Section 220 (2A) are not satisfied in your case and hence regrets its inability to interfere in the matter."

The said order was challenged by way of writ petition before the High Court of Delhi. It was contended before the High Court that while rejecting the application, the Central Board of Direct Taxes had given no reasons. The said contention was rejected by the Delhi High Court and ultimately dismissed the said writ petition. When the matter was taken by the assessee by way of appeal to the Supreme Court. Disagreeing with the order of the Board as well as the Delhi High Court, after holding that the order was not supported by reasons, the Hon' ble Supreme Court in Kishan Lal's case (230 ITR 85), set aside the same. The following conclusion is relevant.

"When an application is filed under sub-section (2A) of Section 220 the authority concerned is called upon to take a quasi-judicial decision. If it is satisfied that the reasons contained in the application would bring the case under clauses (i) (ii) and (iii) of Section 220 (2A) then it has the power either to reduce or waive the amount of interest. Even though in the said sub-section it is not stated that any reasons are to be recorded in the order deciding such an application, it appears to us that it is implicit in the said provision that whenever such an application is filed the same should be decided by a speaking order. Principles of natural justice in this regard would be clearly applicable. It will be seen that a decision which is taken by the authority under Section 220 (2A) can be subjected to judicial review, as was sought to be done in the present case by filing a petition under article 226; this being so and where the decision of the application may have repercussions with regard to the amount of interest which an assessee is required to pay it would be imperative that some reasons are given by the authority while disposing of the application. Mr. Salve, learned senior counsel for the appellant, has strongly relied upon the observations of this

court in Siemens Engineering and Manufacturing Co. of India Ltd., vs. Union of India (1976) AIR 1976 SC 1785; (1976) 2 SCC 981, where at page 986 it has been stated that where an authority makes an order in exercise of its quasijudicial function it must record its reason in support of the order it makes. In other words, every quasi-judicial order must be supported by reasons. In our opinion, the observations in that case would apply in the present case also. "

10. We have already referred to the rejection order passed by the Central Board of Direct Taxes, which is similar to the order passed by the Commissioner of Income-tax, in our case. It is clear from the decision of the Supreme Court that even though there is no specific mandate in the sub-section that reasons are to be recorded while deciding such an application, it is clear from the order of the Supreme Court that whenever such an application is filed seeking waiver of interest, the same should be decided by the Authority by a speaking order. Inasmuch as the first respondent is exercising quasijudicial function, we hold that it is incumbent on its part to record its reasons in support of the order it makes. Though the learned senior standing counsel for Revenue has pointed out that last paragraph (para 3) of the order communicates the application of mind of the Authority wherein it is stated that there is no sufficient reason for the invocation of sub-Section 2A of Section 220 of the Act, in the light of the pronouncement of the Supreme Court on the very same provision, we are of the view that the order of the Commissioner cannot said to be a speaking order recording his reasons for dismissing the petition filed by the assessee. We hold that the order of the Commissioner dated 07.11.1988 is not supported by reasons and the observation and conclusion made by the Supreme Court in the case of Kishan Lal (Volume 230 85) would squarely apply to the case on hand. This material aspect has not been considered by the learned Judge who has committed an error in dismissing the writ petition.

In the light of what is stated above, we hereby set aside the order of the learned Judge dated 09.09.1997 made in W.P.No.15177 of 1988 and the proceedings of the Commissioner of Income-tax in C.No.2031 (64) /88-89/TN.V dated 07.11.1988. We direct the Commissioner of Income-tax to restore the application of the petitioner dated 03.09.1988 filed under Section 220 (2A) of the Act to his file and dispose of the same afresh in accordance with law within a period of three months from the date of receipt of a copy of this order. The writ appeal is allowed. There would be no order as to costs.

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Internet:Yes

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